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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03698-SI

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS**

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INTRODUCTION

Plaintiffs' Amended Complaint, ECF No. 100 (Complaint), asserts a facial challenge to Executive Order 14210 (Workforce Executive Order) and to the February 26, 2025 Memorandum (Workforce Memorandum) from the Office of Management and Budget (OMB) and Office of Personnel Management (OPM). The Executive Order and Memorandum are lawful on their face and the Supreme Court accordingly concluded that this challenge is likely to fail. *See Trump v. AFGE*, No. 24A1174, 2025 WL 1873449 (U.S. July 8, 2025). Plaintiffs thus lack viable claims challenging the Executive Order and Memorandum. Although Plaintiffs insist that the Supreme Court's order is not technically binding because the Court held only that the Order and Memorandum are "likely" lawful, that conclusion reflects a near-unanimous ruling on a question of law, not a factual question requiring further development. And Plaintiffs make no argument concerning these sources independent of arguments the Supreme Court necessarily and overwhelmingly rejected.

It is entirely unclear what Plaintiffs even purport to challenge *other than* the Executive Order and Memorandum, but they fail to state a claim under any theory. If Plaintiffs contend that any "approval" of an Agency RIF and Reorganization Plan (ARRP) is unlawful insofar as the ARRP contemplates future agency actions *that would be unlawful* (or arbitrary and capricious), the relevant action would be from the agency if and when it takes any such actions in the future. If they contend that the mere fact of OPM and OMB approval is what makes the ARRPs unlawful, any such argument is wholly without merit and is contrary to the Supreme Court's stay order. If they contend that other "directives" from OPM and OMB direct that agencies cut spending and staff, they identify no such directives and, if such directives existed, the relevant actions would still be any agency actions actually effectuating such cuts. And if they seek to challenge agencies' *actual RIFs or reorganizations* independent of any challenge to the Executive Order and Memorandum, they have failed to identify the precise actions at issue, they have likewise failed to plead allegations that specific agency RIFs and reorganizations are contrary to agency organic statutes or otherwise provide specific grounds for any such claims, and this Court would plainly lack jurisdiction to consider such challenges. Finally, and for multiple reasons, the claims against

1 the Department of Government Efficiency (DOGE) must be dismissed. None of Plaintiffs’
 2 contrary arguments persuades otherwise.

3 **ARGUMENT**

4 **I. The Complaint Must Be Dismissed Insofar as it Challenges the Workforce** 5 **Executive Order.**

6 As set forth in the motion to dismiss, ECF No. 216 at 8-14, the Workforce Executive Order
 7 is lawful on its face. The directive for “Agency Heads [to] promptly undertake preparations to
 8 initiate large-scale reductions in force (RIFs), consistent with applicable law,” Exec. Order 14210
 9 § 3(c), is lawful. Federal law expressly permits agencies to conduct RIFs, and there is no
 10 requirement that such RIFs not be “large-scale”; indeed, federal law explicitly recognizes that RIFs
 11 will sometimes involve “the separation of a significant number of employees.” 5 U.S.C.
 12 § 3502(d)(1)(B); *see* 5 C.F.R. § 351.803(b). That being so, the President unquestionably had the
 13 authority to direct agencies to conduct RIFs, consistent with law, in furtherance of his policy
 14 objectives.

15 Plaintiffs contend that “no statute provides federal agencies *unfettered* authority to engage
 16 in downsizing via RIFs,” Opp. at 3 n.2, but, for purposes of assessing the legality of the Executive
 17 Order, this argument is beside the point. Agencies unquestionably have authority to conduct RIFs,
 18 and courts have repeatedly rejected challenges to agencies’ decisions to conduct RIFs, recognizing
 19 that such reductions are a matter of executive discretion. *See, e.g., Keim v. United States*, 177 U.S.
 20 290, 295 (1900); *Markland v. OPM*, 140 F.3d 1031, 1033 (Fed. Cir. 1998). And again, if any
 21 specific RIFs undertaken pursuant to the Executive Order were to end up violating any statutory
 22 requirements, that would be *contrary* to the Executive Order, which directs that any RIFs be
 23 undertaken consistent with applicable law,” including laws that “mandate[]” the performance of
 24 certain “functions” or “require[]” certain agency “subcomponents.” Any such speculation—or
 25 indeed, even any specific RIFs that Plaintiffs believe *do* violate statutory requirements—is not a
 26 basis for challenging *the Executive Order itself*.

27 The Executive Order further provides that, within 30 days of its issuance, “Agency Heads
 28 shall submit to” OMB and OPM “a report that identifies any statutes that establish the agency, or

subcomponents of the agency, as statutorily required entities.” Exec. Order 14210 § 3(e). That report “shall discuss whether the agency or any of its subcomponents should be eliminated or consolidated.” *Id.* This directive is also lawful and, indeed, wholly unremarkable.

Plaintiffs provide no basis for allowing their challenge to the Executive Order to go forward. Plaintiffs fault Defendants for asking the Court to “revisit its earlier conclusions” regarding the legality of the Executive Order. Opp. at 16. Given that the Supreme Court stayed the Court’s prior order and found that the Executive Order was likely lawful, that criticism is unfounded. And even absent the Supreme Court’s stay order, there would be nothing wrong with Defendants asking the Court not to adhere to an incorrect legal analysis from an earlier stage of the case. Defendants have explained why the Court’s analysis of the Executive Order’s legality at the preliminary injunction stage was mistaken. Among other reasons: (1) there is nothing suspect about the President directing how agencies within the Executive Branch should exercise their lawful authorities (and indeed, that is how the Executive Branch is supposed to work); (2) nothing in federal law categorically prohibits large-scale RIFs; (3) the legality of an executive order itself is a question of law, to be determined based on the executive order’s content (not, as the Court seemed to view it, as a factual inquiry to be resolved on a record of how agencies are supposedly implementing it); and (4) since the Executive Order expressly directs compliance with the law and is certainly *capable* of being applied lawfully, there is no basis for attacking its validity. ECF No. 216 at 9-12. Plaintiffs do not meaningfully address any of this.

In any event, the Supreme Court *did* stay this Court’s preliminary injunction. Plaintiffs’ suggestion that the Court simply adhere to “[t]he rationale previously provided by this Court (and the Ninth Circuit),” Opp. at 16, is an invitation to defy the Supreme Court. Plaintiffs insist that those prior decisions “certainly establish[] that Plaintiffs have at least stated a claim, even if the Supreme Court has questioned whether Plaintiffs will ultimately prevail.” Opp. at 16. But this ignores that the legality of the Executive Order is a question of *law*, not a question of fact. *Bldg. & Const. Trades Dep’t, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32 (D.C. Cir. 2002); *see also United States v. Xiaoying Tang Dowai*, 839 F.3d 877, 879 (9th Cir. 2016) (constitutionality of a statute is a question of law); *United States v. Godinez–Ortiz*, 563 F.3d 1022, 1032 (9th Cir. 2009); *United*

1 *States v. Harris*, 185 F.3d 999, 1003 (9th Cir. 1999). Even if the legality of the Executive Order
 2 presented a *difficult* legal question—it does not—it is still a *purely legal* question, which is
 3 appropriately resolved at the motion to dismiss stage. Plaintiffs’ argument that the lawfulness of
 4 the Executive Order should be decided “on a full factual record,” Opp. at 17, is thus misplaced.
 5 Whether the Executive Order is lawful—just like the question whether a statute is constitutional—
 6 depends on what the Executive Order says. Because the Executive Order does not direct agencies
 7 to take any unlawful actions, the Order is lawful—and the Supreme Court’s near-unanimous order
 8 supports, if not dictates, that legal conclusion. That should be the end of the analysis.

9 Relatedly, Plaintiffs’ attempt to consign the Supreme Court’s near unanimous stay order to
 10 irrelevancy is wrong. Plaintiffs devote significant space to arguing that a stay decision is not
 11 technically *conclusive* as to the merits *in all cases*, and that lower courts have occasionally issued
 12 rulings on the merits that conflict with the Supreme Court’s determination of how the merits were
 13 likely to be resolved. Opp. at 7-10. That misses the point in multiple respects.

14 First of all, most of the authority Plaintiffs invoke is irrelevant. Plaintiffs cite a concurrence
 15 from Justice Barrett, but that concurrence explained why she voted to *deny* a motion to stay and
 16 why the Supreme Court should be circumspect generally in granting that relief. *Does 1-3 v. Mills*,
 17 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of stay). That underscores that where, as
 18 here, the Supreme Court *grants* a stay, lower courts must respect the conclusions underlying the
 19 stay order. They cite a different Supreme Court decision stating that “when we are asked to stay
 20 an execution on the grounds of a serious legal question, we ask whether the capital defendant is
 21 likely to prevail on the merits of the issue before us, not whether he is likely to prevail on the
 22 merits of the underlying suit,” *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2562 (2025); but putting
 23 aside the sui generis nature of the Supreme Court’s practice in capital cases, here the Supreme
 24 Court *addressed* the issue of the Executive Order’s likely legality.

25 Plaintiffs also cite one case where a divided panel of the Ninth Circuit reached a legal
 26 conclusion contrary to the Supreme Court’s conclusion in a stay posture, *see Sierra Club v. Trump*,
 27 963 F.3d 874, 887 (9th Cir. 2020); the Ninth Circuit’s panel decision was subsequently vacated on
 28 other grounds, *Biden v. Sierra Club*, 142 S. Ct. 46 (2021). First of all, in that case, the panel

1 “heed[ed] the words of the [Supreme] Court,” *Sierra Club*, 963 F.3d at 887, and explained in detail
 2 why it nonetheless concluded that the plaintiff there had a cause of action. The Ninth Circuit did
 3 not simply decline wholesale to revisit previous analysis that the Supreme Court rejected, as
 4 Plaintiffs ask the Court to do here. And in any event, a single divided panel decision that was
 5 subsequently vacated is hardly sturdy ground for Plaintiffs’ assertion that this Court should simply
 6 adhere to its previous conclusions in the face of the Supreme Court’s order. *See* ECF No. 216 at
 7 13-14 n.7 (citing research indicating that, outside the death penalty context, Supreme Court stay
 8 decisions almost forecast the eventual merits decision).¹

9 In any event, even if the stay decision is not technically binding, it obviously at least heavily
 10 *informs* how this Court should resolve the motion to dismiss. Even holdings that the Government
 11 is “likely” to succeed on the merits must “inform how a [lower] court” proceeds “in like cases,”
 12 *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025)—let alone in the same case. That is particularly true
 13 here given the context of the Supreme Court’s order. This is not a death penalty case. It is not a
 14 case where the Supreme Court gave no basis for its stay (leaving the lower courts to guess whether
 15 the stay was based on the Supreme Court’s assessment of the merits, irreparable harm, or some
 16 other consideration). *See Doe v. Trump*, 284 F.Supp.3d 1182, 1185 (W.D. Wash. 2018). It is not a
 17 case where the Supreme Court issued a stay for reasons unrelated to the merits. *Merrill v. Milligan*,
 18 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring). Nor is it a case where the Supreme Court
 19 granted a stay based on a preliminary *factual assessment* that may prove incorrect. The Court
 20 concluded that the Executive Order was “likely” lawful because that was the relevant legal
 21 standard on a motion for a stay pending appeal. But the Court reached that conclusion as to a purely
 22 legal issue, following extensive briefing, including amicus briefs on both sides, in an order that
 23 apparently represented the views of all but one Justice. Respectfully, “[t]his court must listen.”

24 ¹ Plaintiffs’ discussion of the Government’s Ninth Circuit reply brief in *AFGE v. OPM*, No. 25-
 25 1677 (9th Cir July 11, 2025), ECF No. 71-1, is not well taken. In that brief, the Government argued
 26 that a decision denying a stay by a prior *Ninth Circuit* motions panel in a *different case* did not
 27 bind a subsequent merits panel. *Id.* at 16. That does not mean that a district court can ignore an
 28 order from the Supreme Court in the same case. And the Government’s reply brief further noted
 that the Supreme Court had *granted* a stay of the preliminary injunction after the prior motions
 panel had denied one, and thus that that decision obviously was entitled to no weight in the merits
 panel’s analysis.

1 *Vera Institute for Justice et al. v. Department of Justice et al.*, No. 25-CV-1643 (APM), 2025 WL
2 1865160, at *2 (D.D.C. July 7, 2025).

3 **II. The Complaint Must Be Dismissed Insofar as it Challenges the Workforce**
4 **Memorandum.**

5 The Workforce Memorandum is likewise lawful on its face. As we explained in the motion
6 to dismiss, the Workforce Memorandum states repeatedly that agencies should only undertake
7 actions consistent with their statutory authority, likewise repeatedly makes clear that agencies
8 should not undertake any action that would impair service delivery functions, and otherwise
9 consists for the most part of high-level (and unremarkable) guidance. ECF No. 216 at 14. And we
10 explained how, insofar as the Memorandum directs agencies to submit ARRs to OPM and OMB
11 “for review and approval” by specified dates, those directives fall easily within OPM’s and OMB’s
12 statutory authorities and the process established by the President in the Executive Order. *Id.*
13 Plaintiffs do not meaningfully address any of this.

14 And although Plaintiffs repeat their assertion that the Memorandum is *ultra vires*, this
15 claim clearly fails as a matter of law, particularly in light of the Supreme Court’s order. *Ultra vires*
16 review, even where available, requires a plaintiff to satisfy among the most demanding standards
17 known in the law. As then-Judge Kavanaugh put it, *ultra vires* review is “essentially a Hail Mary
18 pass—and in court as in football, the attempt rarely succeeds.” *Nyunt v. Chairman, Broad. Bd. of*
19 *Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009); *see also NRC v. Texas*, 605 U.S. 665, 681 (2025)
20 (repeating this). Under an *ultra vires* theory, “[t]he agency overstep must be ‘plain on the record
21 and on the face of the [statute].’” *Federal Express Corp. v. United States Dep’t of Comm.*, 39 F.4th
22 756, 765 (D.C. Cir. 2022) (quoting *Oestereich v. Selective Serv. System Loc. Board No. 11*, 393
23 U.S. 233, 238 n.7 (1968)) (second alteration supplied by D.C. Circuit). That overstep must amount
24 to a “clear departure by the [agency] from its statutory mandate” or be “blatantly lawless” agency
25 action. *Oestereich*, 393 U.S. at 238. A plaintiff seeking to challenge agency action via a
26 nonstatutory *ultra vires* action “must show more than the type of routine error in statutory
27 interpretation or challenged findings of fact that would apply if Congress had allowed APA
28 review.” *Federal Express Corp.*, 39 F.4th at 765 (quotation marks omitted). “In other words, ultra

1 vires claimants must demonstrate that the agency has plainly and openly crossed a congressionally
2 drawn line in the sand.” *Id.*

3 Whether Plaintiffs can satisfy that highly demanding standard in their challenge to the
4 Workforce Memorandum is, again, a *legal* question, and the answer is straightforward: Plaintiffs
5 cannot show that the Memorandum represents “blatantly lawless” agency action when a nearly
6 unanimous Supreme Court has held that the Memorandum is likely *lawful*. Even if this Court were
7 to *agree* with some of Plaintiffs’ arguments—which it should not—that is simply not close to
8 enough to state a claim under an *ultra vires* theory, particularly given the Supreme Court’s
9 decision. *Cf. NRC v. Texas*, 605 U.S. at 682 (noting that D.C. Circuit had previously rejected
10 Texas’s statutory argument and stating that “[e]ven if one were to disagree with the D. C. Circuit’s
11 conclusion, the statutory argument falls well shy of a meritorious” *ultra vires* claim).

12 As to Plaintiffs’ purported APA challenges to the Memorandum, they too fail as a matter
13 of law. As to the Memorandum’s OPM/OMB approval language, Plaintiffs do not engage with the
14 motion to dismiss on this point: the supposed illegality of this language was the centerpiece of
15 Plaintiffs’ arguments before the Supreme Court, Defendants did not dispute Plaintiffs’ argument
16 that the Memorandum requires OPM and OMB to approve ARRs, Defendants also did not dispute
17 Plaintiffs’ allegation, that OPM and OMB have rejected some ARRs, and the Supreme Court
18 nonetheless held that the Memorandum was likely lawful. There is simply no plausible reading of
19 the Supreme Court’s order that does not foreclose this legal argument. Nor do Plaintiffs identify
20 any other argument that the Memorandum is unlawful apart from those the Supreme Court
21 considered and necessarily rejected.

22 It is also irrelevant that “[n]o court has addressed the likelihood of success on Plaintiffs’
23 arbitrary-and-capricious APA challenge to the OMB/OPM Memorandum,” *Opp.* at 11, since that
24 challenge (encompassed within Claim IV) too plainly fails to state a viable claim. That claim
25 recites eight respects in which the “Memorandum, any decision ‘approving’ an ARR, and
26 DOGE’s directives ordering agencies to make staffing and spending cuts” are allegedly arbitrary
27 and capricious. *Compl.* ¶¶ 410-11. It is unclear which of these assertions they intend to apply to
28

1 the Memorandum specifically. We will thus assume that Plaintiffs assert all eight as to the
2 Memorandum. In any event, all of them fail.

3 The first assertion—that the Memorandum “order[s] federal agencies to cede decision-
4 making authority to OMB, OPM, and/or DOGE, regardless of the requirements of any applicable
5 statute or regulation,” *id.* ¶ 411, reprises Plaintiffs’ allegations as to the Memorandum’s approval
6 requirement, which we have already addressed and the Supreme Court necessarily rejected.

7 The second, third, fourth, and sixth assertions—that the Memorandum (2) “require[s]
8 agencies to disregard their authorizing statutes and regulations, and follow the President’s
9 unconstitutional directions and directions of OMB, OPM, and/or DOGE,” (3) “categorically
10 impose[s] requirements to engage in large-scale RIFs that are necessarily contrary to agency
11 function and authorizing statutes and regulations,” (4) “categorically impose[s] requirements to
12 RIF employees at the President’s direction, according to the offices, programs and functions the
13 President and his Administration eliminate regardless of statute or regulation,” and (6) “require[s]
14 agencies to abandoned reasoned decision-making considering all relevant factors,” *id.*—likewise
15 fail to state a claim. For starters, these assertions—contending that the Memorandum is arbitrary
16 and capricious because it instructs agencies *to violate the law*—are not meaningfully distinct from
17 Plaintiffs’ contrary-to-law claim. They are also contrary to the Memorandum, which repeatedly
18 states that agencies should ensure that any actions they take are consistent with legal
19 requirements.² These conclusory statements, which are contradicted by the Memorandum attached
20 to the Complaint, are false and entitled to no weight or presumption of truth. *See, e.g., Steckman*
21 *v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir.1998) (“[W]e are not required to accept as
22 true conclusory allegations which are contradicted by documents referred to in the complaint.”);
23

24 ² Specifically: (1) any changes made by agencies should seek to “driv[e] the highest-quality, most
25 efficient delivery of their statutorily-required functions,” ECF No. 100-2 at 2; (2) agencies should
26 only seek to eliminate “functions that not statutorily mandated,” *id.*; (3) “[a]gencies should review
27 their statutory authority and ensure that their plans and actions are consistent with such authority,”
28 *id.*; (4) agencies should only seek to “[e]liminat[e] non-statutorily mandated functions through
RIFs,” *id.* at 3; and (5) in their initial reports, agencies must provide “[a]ny statutes that establish
the agency, or subcomponents of the agency, as statutorily required entities,” *id.*

1 *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[T]he tenet that a court must accept as true
2 all of the allegations contained in a complaint is inapplicable to legal conclusions.”).

3 The fifth assertion—that the Memorandum “categorically require[s] agencies to engage in
4 RIFs that will align the agency with Funding Lapse Plan Staffing Levels, which necessarily and
5 by definition cannot adequately staff agencies,” Compl. ¶ 411—is also contrary to the
6 Memorandum. The Memorandum simply instructs agencies to work with their DOGE Team leads
7 to “develop[] competitive areas for ARRP” and to “identify competitive areas that include
8 positions not typically designated as essential during a lapse in appropriations.” ECF No. 100-2.
9 And in making this latter determination, the Memorandum notes that agencies “should refer to the
10 functions that are excepted from the Antideficiency Act (ADA) in the Agency Contingency Plans
11 submitted to OMB in 2019 as the starting point”—which makes sense because the last significant
12 government shutdown occurred during that period. The Memorandum does not remotely
13 suggest—and certainly does not *direct*—that all employees who would not be designated essential
14 during a shutdown should be RIFed, let alone require funding at 2019 funding lapse plan staffing
15 levels. Indeed, any such categorical directive would be contrary to the Memorandum’s repeated
16 admonitions that agencies should not undertake any action that would impair service delivery
17 functions. This assertion is completely manufactured and is likewise entitled to no weight or
18 presumption of truth in resolving the motion to dismiss.

19 Plaintiffs’ seventh assertion—that the Memorandum purportedly requires “agencies to act
20 under unrealistic timeframes that necessarily will result in plans that are not supported by rational
21 reasoning or the agency’s considered judgment,” Compl. ¶ 411—likewise fails to state a claim.
22 The Memorandum contemplates implementation of ARRP to occur by September 30, 2025,
23 nearly *eight months* after the Executive Order. In any event, if an agency were compelled to act
24 under unrealistic timeframes, that might make it more likely that any final reviewable decisions
25 the agency reached would be legally vulnerable. But Plaintiffs are not entitled to complain *in*
26 *advance* that a hypothetical future decision will “necessarily” lack sufficient reasoning.

27 Plaintiffs’ eighth assertion—that the Memorandum requires changes to proceed “in secret,”
28 *id.*—likewise has no legal basis. The Memorandum reiterates that agencies must follow all

1 requirements for issuing RIFs, including required notice. ECF No. 100-2 at 7. And it directs
 2 agencies to identify any “changes that must be pursued through notice-and-comment rulemaking.”
 3 *Id.* at 3. Plaintiffs identify no legal principle requiring agencies to more broadly make public their
 4 predecisional and deliberative discussions regarding potential future actions. Plaintiffs’ challenges
 5 to the Memorandum must be dismissed.

6 Finally, even assuming Plaintiffs are entitled to plead in the alternative, they are not entitled
 7 to maintain claims challenging the same purported agency actions on *both* APA and *ultra vires*
 8 grounds. *Ultra vires* review is not available where a plaintiff has an alternative path to judicial
 9 review. *NRC v. Texas*, 605 U.S. at 682. The Court should dismiss Plaintiffs’ APA claim and *ultra*
 10 *vires* claim as to the Memorandum. But at the very least, they cannot have both; if APA review is
 11 available, they cannot also maintain an *ultra vires* claim. The same is true for all of the other
 12 supposed “directives” and other alleged actions Plaintiffs purport to challenge under both the APA
 13 and on an *ultra vires* theory.

14 ***

15 As we explained in our motion to dismiss, all seven claims rely—at least in part—on claims
 16 that the Workforce Executive Order and Workforce Memorandum are unlawful. But at the very
 17 least, Claim I (a direct challenge to the Workforce Executive Order) must be dismissed and the
 18 President must be dismissed from this action. Claim V—which asserts that the Workforce
 19 Memorandum was unlawfully issued without notice-and-comment procedures, Compl. ¶¶ 412-
 20 419—also must be dismissed. This likewise presents a pure question of law and this theory is
 21 foreclosed by the Supreme Court’s stay order; as noted in the motion to dismiss, the parties
 22 litigated this argument in the Supreme Court as well. *See* 24A1174 (S. Ct.) (Plaintiffs’ Response
 23 to Application Filed June 9, 2025) at 28-29 (Plaintiffs making this argument). And the remainder
 24 of the Complaint must be dismissed insofar as it challenges the Workforce Executive Order and
 25 Workforce Memorandum themselves.

26 **III. Plaintiffs otherwise fail to state a claim upon which relief can be granted.**

27 Even if some residue of the Complaint were independent of these two Government-wide
 28 sources and could survive the Supreme Court’s decision, this action still must be dismissed.

1 Plaintiffs insist that they “challenge the manner in which OMB, OPM,” and DOGE “have
 2 implemented the President’s directives, including by engaging in arbitrary and capricious and
 3 otherwise unlawful actions in violation of the APA.” Opp. at 1. But Plaintiffs never make clear
 4 what it is that they are even challenging or the basis of that challenge. To invoke this Court’s
 5 jurisdiction, survive a motion to dismiss, and unlock the doors to discovery, Plaintiffs must, at the
 6 very least, identify specific reviewable actions that injure them, plead specific allegations, and
 7 identify a *viable legal theory* under which those allegations—if *proven*—would entitle them to
 8 relief. Neither Plaintiffs’ shotgun pleadings nor their opposition does any of those things.
 9 Nonetheless, the Complaint and Plaintiffs’ opposition appear to posit a number of supposed actions
 10 and legal theories, none of which have merit. We address each in turn.

11 *Approval of ARRs*: Plaintiffs insist that they are challenging “any decision ‘approving’ an
 12 ARR.” Opp. at 11 (quoting Compl. ¶ 405). But what does this mean?

13 One possibility is that Plaintiffs are contending that the mere fact of OPM and OMB
 14 approval is what makes the ARRs unlawful—even if the proposals in an ARR would be *lawful*
 15 if implemented. That is how the Government understood Plaintiffs’ Complaint. *See* Compl. ¶¶
 16 394-96 (contending that memorandum, approvals, and other unspecified alleged actions usurp
 17 agency authority). But that is an attack on the approval requirement itself, a challenge the Supreme
 18 Court’s decision logically forecloses.

19 Another possibility is that Plaintiffs intend to argue that any OPM and OMB “approval” of
 20 an ARR is unlawful because the ARR contemplates future *unlawful* action. But the obvious
 21 response is that Plaintiffs can at most challenge any final agency action if and when it occurs, not
 22 the predecisional ARRs—and certainly not OPM/OMB’s “approval” of such predecisional plans.

23 Even if such “approvals” represent final agency action, Plaintiffs have no standing to
 24 challenge them. Such approvals do not injure Plaintiffs (or anyone else) since they do not
 25 themselves direct RIFs (or anything else). Nor would any injury be redressable—even if this Court
 26 set aside a hypothetical “approval” of an ARR, that would have no effect on the agency’s ability
 27 to engage in a RIF or any additional otherwise lawful proposal contemplated in an ARR. As
 28 Defendants have repeatedly noted, ARRs (whether “approved” or not) do not commit agencies

1 to take or not take any specific actions. Nor would any challenge to allegedly unlawful potential
2 actions contained in a pre-decisional planning document be ripe; the agency may not take the
3 action at all, or that final action may differ from what was in an agency's ARRP. But regardless
4 of the doctrinal bucket, the basic point is the same: the relevant action would be the implemented
5 RIF or reorganization, not the mere plan to do so, let alone OPM/OMB's "approval" of an agency's
6 planning document.

7 *Other OPM and OMB "Directives":* Plaintiffs dispute Defendants' characterization that
8 they do not identify any assertedly unlawful action by OPM and OMB other than the issuance and
9 implementation of the Workforce Memorandum, citing unspecified "directives" to make staffing
10 and spending cuts. Opp. at 4-5, 12 n.6. There are many problems here. First of all, Plaintiffs do not
11 identify any such directives from OPM or OMB. Also, the opposition characterizes these supposed
12 "directives" as coming from OPM and OMB, *id.* at 4-5, but the Complaint does not. The
13 Complaint's allegations regarding OPM and OMB are limited to the Memorandum and its
14 associated deadlines, Compl. ¶¶ 160-176, and it repeatedly alleges that "DOGE" is responsible for
15 alleged directives to make specific cuts, Compl. ¶ 405, 410, 416, 417, 418.

16 In any event, none of this matters. Again, if OMB or OPM were directing cuts or other
17 agency actions that would be unlawful if implemented, the relevant action to challenge would be
18 the agency action implementing such allegedly unlawful cuts. And similar to the above, if the
19 gravamen of Plaintiffs' allegations is really that OPM and OMB are directing actions that would
20 be *lawful*, but that agency leadership—including the Presidentially nominated and Senate-
21 confirmed agency head—do not want to take, that does not state a legally viable claim. If OPM
22 and OMB were to tell an agency to do something that they lack the authority to force the agency
23 to do—and if the agency does not in fact want to do—the "remedy" would belong to the agency.
24 And that "remedy" would be for the agency to simply refuse to take the action that, according to
25 Plaintiffs' apparent allegations, the agency did not want to take. But Plaintiffs have no authority
26 to hale the Executive Branch into court on the theory that one component of the Executive Branch
27 is allegedly bullying another Executive Branch component. That is not the judicial role.

1 *Actual RIFs and Reorganizations*: Finally, Plaintiffs’ assertion that the Complaint properly
2 challenges RIFs and other “implementation actions,” Opp. at 12, likewise fails.

3 Initially, the Government does not understand what Plaintiffs’ purported challenge is. One
4 possibility is that Plaintiffs are alleging that Federal Agency Defendants’ RIFs and reorganizations
5 are (or will be) unlawful (or arbitrary and capricious) because agencies are *following* the Executive
6 Order and Memorandum. That is unquestionably the challenge actually articulated in Claims VI
7 and VII of the Complaint. Compl. ¶¶ 420-431. If that is Plaintiffs’ claim, it fails because the
8 Executive Order and Memorandum are lawful.

9 A second possibility is that Plaintiffs challenge agency RIFs and reorganizations as
10 unlawful/arbitrary and capricious for following supposedly illegal orders other than the Executive
11 Order and Memorandum. Opp. at 18 (“Plaintiffs challenge the legality of the OMB and OPM
12 approvals of ARRP; OMB, OPM, and DOGE directives to agencies to cut functions, programs
13 and people; and Federal Agency Defendants’ actions taken to implement those directives.”). We
14 addressed this possibility above: Plaintiffs do not adequately plead the existence of any such
15 “directives” and neither these directives nor any OPM/OMB “approval” of ARRP would be a
16 basis for challenging agency action that is otherwise *lawful*.

17 That brings us to the third possibility, which is that Plaintiffs intend to assert ordinary APA
18 claims—that specific RIFs and reorganizations violate specific legal requirements or are arbitrary
19 and capricious, on grounds independent of the Executive Order and Memorandum (or any other
20 supposed “orders”). But if that is Plaintiffs’ intent (which even now is entirely unclear), any such
21 challenge is not adequately pled. Part of the problem, of course, is that Plaintiffs brought suit *before*
22 most such decisions were made and announced—so Plaintiffs could not have had any basis for
23 challenging decisions they had not seen. ECF No. 216 at 220. But contra Plaintiffs, Opp. at 12-13,
24 that is not the *only* problem. Any proper APA challenge to a specific RIF (or other agency
25 action)—if there is a proper APA challenge—would, at a minimum, need to identify each specific
26 RIF being challenged and adequately plead that such a RIF is unlawful and/or arbitrary and
27 capricious by reference to the specific statutes and other legal authorities governing the agency’s
28 activities. The Complaint does not do that. Rather, Plaintiffs just repeat the Complaint’s

blunderbuss allegations that agency RIFs “disregard their authorizing statutes” and “engage in large-scale RIFs that are necessarily contrary to agency’s ability to maintain required function and authorizing statute.” Opp. at 12 (quotation marks omitted). These are just Plaintiffs’ characterizations of what the Executive Order and Memorandum (as well as unspecified “orders”) supposedly require. Plaintiffs make no attempt to explain how or why specific RIFs violate any specific statutory or other requirements. To the extent Plaintiffs have specific objections to particular RIFs on grounds distinct from the Executive Order and Memorandum, they have not intelligibly pled what the asserted legal violations are.

And even if Plaintiffs did adequately plead garden variety APA challenges to specific RIFs, this Court would not have jurisdiction to consider them. Plaintiffs insist that “the rationale of the Ninth Circuit and this Court’s prior jurisdictional rulings” support jurisdiction over an ordinary APA claim challenging specific RIFs, Opp. at 19, but they obviously do not. This Court previously concluded that it had jurisdiction because Plaintiffs brought constitutional and statutory challenges to the Workforce Executive Order and Workforce Memorandum that, in the Court’s view, were not the sorts of claims as to which Congress intended to preclude district-court review under the APA. ECF No. 124 at 23-25. Defendants disagree with the Court’s prior conclusion but that is obviously very different than Plaintiffs’ apparent current contention that *all purported APA* claims challenging federal employment decisions may be brought in federal district court—even a claim that a specific RIF violates specific agency governing statutes. Opp. at 19. “If the CSRA did not preclude APA claims addressing employment disputes, a savvy litigant could recast just about any such dispute with her employer as an APA suit, giving rise to a parallel proceeding in district court.” *Lucas v. Am. Federation of Government Employees*, --- F.4th ----, No. 23-7051, 2025 WL 2371197, at *10 (D.C. Cir. Aug. 15, 2025) (opinion of Garcia, J., joined by Pillard and Pan, JJ.).

IV. The claims against “DOGE” must be dismissed.

Plaintiffs have no viable claims against “DOGE.” As previously explained, DOGE is a government-wide initiative, not a component that can be sued. The cases Plaintiffs cite involving, in Plaintiffs’ characterization, “[t]he component parts of DOGE,” addressed suits against *USDS*. *AFL-CIO v. Dep’t of Lab.*, 778 F. Supp 3d 56, 89 n.19 (D.D.C. 2025); *AFL-CIO v. Dep’t of Lab.*,

766 F. Supp. 3d 105, 111-12 (D.D.C. 2025). And of course, in cases involving reviewable final agency action, agencies are subject to suit under the APA. But “DOGE”—comprised of USDS, the USDS Temporary Organization, and DOGE teams at every federal agency comprised of federal employees for that agency—is not a single juridical entity that can be sued.

That is just the beginning of the problems. The Complaint contains one passing reference to USDS. Compl. ¶ 145. And for the reasons laid out in Defendants’ motion to dismiss, USDS categorically lacks authority to issue binding directives to federal agencies. ECF No. 216 at 24. But even if “USDS or the Temporary Service were providing orders to DOGE teams or to others at agencies requiring how much, who, and when to cut,” Opp. at 22—orders Plaintiffs do not identify and do not even squarely contend exist—that would not state a claim for reasons similar to those discussed above. If USDS issued orders to agencies to make cuts that were *unlawful*, the relevant action would be any agency action actually implementing such cuts. And if USDS issued orders to agencies to make cuts that were *lawful*, it obviously would not be the business of the federal courts to mediate a dispute between a federal agency and a White House component about how an agency should exercise its lawful authorities. The claims against USDS must be dismissed.

Virtually all—if not all—of the Complaint’s allegations against “DOGE” appear to involve not USDS but events at federal agencies (and thus members of agency DOGE Teams). Compl. ¶¶ 24, 151, 15, 175. Plaintiffs do not dispute that any activities of agency DOGE Teams—which are comprised of agency employees, who answer to agency leadership—“can be attributed to the agencies themselves.” Opp. at 21 n.12. If any alleged internal activities or directives themselves result in reviewable agency actions that Plaintiffs believe are unlawful, Plaintiffs can challenge those activities; but they cannot bring a challenge (whether under the APA or on an “*ultra vires*” theory) to alleged internal agency directives themselves.

CONCLUSION

This Court should dismiss this action in its entirety.

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Respectfully submitted,

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